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Reduction Investment Plan and
Genentech, Inc.

(Additional Counsel Listed
on Signature Page)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

KINFONG SIT, an individual; and MEE
WAI CHIU, an individual,

Competing
Claimants,

v.

GENENTECH, INC., TAX REDUCTION
INVESTMENT PLAN; AYUMI
NAKAMOTO; and DOES 1 to 20,

Defendants.

GENENTECH, INC., as Plan
Administrator for The Genentech, Inc.,
Tax Reduction Investment Plan,

Plaintiff in
Interpleader

v.

KINFONG SIT, MEE WAI CHIU, and
AYUMI NAKAMOTO,

Defendants in
Interpleader.

Case No. 3:12-CV-04864-SI

STIPULATION AND ~~[PROPOSED]~~ ORDER

Civil Local Rule 7-12

Related Case No. 3:12-CV-05077-SI

Pursuant to Civil Local Rule 7-12, Kinfong Sit and Mee Wai Chiu (“Competing Claimants”), Genentech, Inc., as Plan Administrator for Defendant Genentech, Inc. Tax Reduction Investment Plan (the “Plan”),¹ and Ayumi Nakamoto, by and through their respective counsel, stipulate and respectfully request the Court to order as follows:

I. RECITALS

A. The late Kin Kui Sit, a former employee of Genentech, participated in the Plan, which is a retirement plan governed by the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001 *et seq.* (“ERISA”). The Plan is an eligible individual account plan and Mr. Sit’s Plan accrued benefit is maintained in his Plan account (the “Account”).

B. Mr. Sit married Ms. Nakamoto on February 1, 2006, and initiated divorce proceedings in California state court on November 23, 2009.

C. On June 12, 2011, an amended beneficiary designation pertaining to the Account was electronically submitted to the Plan’s recordkeeper, naming the Competing Claimants as the sole beneficiaries of the Account.

D. The Plan administrator and the Plan recordkeeper never received a notarized consent from Ms. Nakamoto to the designation of someone other than herself as Mr. Sit’s beneficiary.

E. Mr. Sit died on June 19, 2011 prior to the entry of a divorce decree in the divorce proceedings he had initiated.

F. On January 23, 2012, the Competing Claimants submitted a formal claim for benefits under the Plan pertaining to the Account. The claim asserted that the June 12, 2011 designation was valid without Ms. Nakamoto’s consent pursuant to Section 417(a)(2) of the Internal Revenue Code on the grounds that she had abandoned Mr. Sit prior to his death within the meaning of California law, and that an order of abandonment from a California court could issue *nunc pro tunc*.

G. Genentech denied the claim and subsequent appeal on the grounds that the Plan

¹ As of October 1, 2012, the Plan merged into the US Roche 401(k) Savings Plan. For purposes of this Agreement, references to the Plan on or after that date are to the US Roche 401(k) Savings Plan.

1 and the Internal Revenue Code require notarized spousal consent in order for a married plan
2 participant to designate someone other than his or her spouse as the beneficiary of an ERISA-
3 governed retirement plan. Genentech concluded that Ms. Nakamoto was the proper beneficiary
4 of the Account because the Competing Claimants could not provide a valid spousal consent to the
5 designation naming them as beneficiaries and had not obtained an order of abandonment prior to
6 Mr. Sit's death.

7 H. On August 30, 2012, the Competing Claimants filed a lawsuit against the Plan and
8 Ms. Nakamoto in the Superior Court of California (the "Sit Action"). The complaint alleges that
9 the Competing Claimants are the proper beneficiaries of the Account. The Sit Action asserts a
10 claim for benefits under ERISA Section 502(a)(1)(B), 29 U.S.C. Section 1132(a)(1)(B), alleges
11 breaches of fiduciary duty, and requests a declaratory judgment and the imposition of a
12 constructive trust. The Plan removed the Sit Action to this Court on September 17, 2012.

13 I. Genentech concluded that the Sit Action presented a colorable claim for benefits
14 and an inconsistent demand of entitlement with respect to the Account. Accordingly, Genentech
15 filed an interpleader action on behalf of the Plan against Competing Claimants and Ms. Nakamoto
16 in this Court captioned *Genentech, Inc. v. Sit et al.*, No. 3:12-cv-05077-JSW (N.D. Cal. filed
17 Sept. 28, 2012) (the "Interpleader Action").

18 J. By the Interpleader Action, Genentech sought an order that would require the
19 Competing Claimants and Ms. Nakamoto to litigate their respective rights to the Account so that
20 the Court could declare and adjudge the proper beneficiary or beneficiaries under the Plan and the
21 law. The Interpleader Action also sought discharge and release of Genentech, the Plan, and the
22 Plan's fiduciaries from all claims and liability relating to the Account upon deposit with the Court
23 of the benefits attributable to Mr. Sit's participation in the Plan.

24 K. The Court entered an order relating the Interpleader Action to the Sit Action on
25 November 13, 2012, and subsequently stayed both cases pending resolution of a third case,
26 *Nakamoto v. Sit et al.*, No. CGC-12-520301 (California Superior Court), a California state court
27 action in which Ms. Nakamoto challenged the validity of Mr. Sit's will (the "Nakamoto Action").
28

1 L. On March 13, 2013, without the participation of Genentech or the Plan, the
 2 Competing Claimants and Ms. Nakamoto reached an agreement to resolve the Nakamoto Action.
 3 That settlement agreed upon an allocation of the Account among Ms. Nakamoto, Mr. Sit and Ms.
 4 Chiu, as beneficiaries of the respective amounts specified in Paragraph 2 below, and requires the
 5 Competing Claimants to voluntarily dismiss the Sit Action. Declaration of Alison B. Willard
 6 (“Willard Decl.”), Exh. A. It also requires the Competing Claimants and Ms. Nakamoto to work
 7 with Genentech to obtain an appropriate order from this Court to carry out the terms of the
 8 settlement.

9 M. The Plan and Ms. Nakamoto have denied and continue to deny the allegations
 10 made by Competing Claimants in the Sit Action. However, all parties to the Sit Action and the
 11 Interpleader Action mutually desire to resolve both matters and stipulate and respectfully request
 12 the Court to order as follows.

13 **II. STIPULATION**

14 1. Within five (5) business days of the Court’s order approving this Stipulation, Ms.
 15 Nakamoto and the Competing Claimants shall each provide to Genentech all information
 16 necessary to authorize Genentech to open individual Plan accounts in their names, as
 17 beneficiaries of the Account. Upon receipt, Genentech shall direct the Plan trustee to open such
 18 accounts and to provide each beneficiary with the following: (a) the account number of and name
 19 associated with his or her individual Plan account; (b) the telephone number for the Plan trustee’s
 20 customer service department, which can provide the beneficiaries with information about how to
 21 take direct and/or rollover distributions from their individual Plan accounts; and (c) any forms or
 22 other paperwork required by the Plan or the Plan trustee to effect a rollover distribution. The
 23 parties agree, and the Court finds, that the colorable claim for benefits presented by the
 24 Competing Claimants permits the transfer of Plan assets to them as beneficiaries as provided by
 25 Section 6.1 of the Plan (Willard Decl., Exh. B) and 26 U.S.C. §§ 402(c)(11) and 401(a)(9)(E).

26 2. As soon as administratively practicable following the opening of the Plan accounts
 27 described in Paragraph 1, Genentech shall direct the Plan trustee to convert the assets in the
 28 Account to cash or cash equivalents and to then transfer the assets as follows:

1 a. Transfer cash or assets having an aggregate value of \$570,000 from the
2 Account into the Plan account established in the name of Ayumi Nakamoto, as beneficiary;

3 b. Transfer cash or assets having an aggregate value of 55% of the remainder
4 of the Account into the Plan account established in the name of Kinfong Sit, as beneficiary; and

5 c. Transfer the balance of the Account into the Plan account established in the
6 name of Mee Wai Chiu, as beneficiary.

7 3. As soon as administratively practicable thereafter, Genentech shall provide
8 counsel for the Competing Claimants and Ms. Nakamoto a statement of the amount of cash or
9 value of assets transferred into each of their individual Plan accounts pursuant to Paragraph 2.

10 4. Following such transfers, Competing Claimants and Ms. Nakamoto shall be
11 entitled to rollover some or all of the assets in their individual Plan accounts, or to otherwise take
12 a distribution, in accordance with the Plan's regular distribution procedures.

13 5. The failure by any party to provide the information required in Paragraph 1 above
14 shall not delay the transfer of assets to any other party.

15 6. Within five (5) business days of the Court's order approving of this Stipulation,
16 the Competing Claimants shall dismiss the Sit Action in its entirety with prejudice and Genentech
17 shall dismiss the Interpleader Action in its entirety with prejudice.

18 7. The Competing Claimants and Ms. Nakamoto, on their own behalf and on behalf
19 of their respective heirs, spouses, successors and assigns, waive and release any and all claims,
20 whether or not now known to them, against Genentech, the Plan and, as applicable by the nature
21 of the entity, its affiliated companies, fiduciaries, service providers, attorneys, recordkeepers and
22 trustees, arising from or relating to the subject matter of the Sit Action, the Interpleader Action,
23 the Nakamoto Action, and/or the Account.

24 8. Each party shall bear its own costs and attorney's fees.

25 9. Nothing about the fact or content of this Stipulation or Order shall be considered to
26 be or treated by any party as an admission of any breach, wrongdoing, liability or violation of law
27 by any other party.
28

10. In the event the Court does not approve this Stipulation and Proposed Order in its entirety, this Stipulation shall become ineffective and the parties' respective positions as of the date this Stipulation was fully executed shall be restored.

IT IS SO STIPULATED.

Dated: June 7, 2013

/s/ Jennifer Matthews
 GENENTECH, INC., individually and as Plan
 Administrator for The US Roche 401(k) Savings
 Plan f/k/a The Genentech, Inc. Tax Reduction
 Investment Plan

By: Jennifer Matthews
 Printed Name

Senior Corporate Counsel
 Title

Dated: June 7, 2013

KINFONG SIT

Dated: June 7, 2013

MEE WAI CHIU

Dated: June 7, 2013

AYUMI NAKAMOTO

APPROVED AS TO FORM

Dated: June 7, 2013

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 Inc. Tax Reduction Investment Plan

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Dated: _____, 2013

GENENTECH, INC., individually and as Plan Administrator for The US Roche 401(k) Savings Plan f/k/a The Genentech, Inc. Tax Reduction Investment Plan

By: _____
Printed Name

Title

Dated: 6/6, 2013

KINFONG SIT
KINFONG SIT

Dated: _____, 2013

MEE WAI CHIU

Dated: _____, 2013

AYUMI NAKAMOTO

APPROVED AS TO FORM

Dated: _____, 2013

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Administrator for The US Roche 401(k) Savings
Plan f/k/a The Genentech, Inc. Tax Reduction
Investment Plan

9 By: _____
10 Printed Name

11 _____
12 Title

13 Dated: _____, 2013

KINFONG SIT

14
15 Dated: 6-6, 2013

Mee Wai Chiu
MEE WAI CHIU

16
17
18 Dated: _____, 2013

AYUMI NAKAMOTO

19
20 APPROVED AS TO FORM

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27 Attorneys for Genentech, Inc. and the Genentech,
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Dated: _____, 2013

GENENTECH, INC., individually and as Plan Administrator for The US Roche 401(k) Savings Plan f/k/a The Genentech, Inc. Tax Reduction Investment Plan

By: _____
Printed Name

Title

Dated: _____, 2013

KINFONG SIT

Dated: _____, 2013

MEE WAI CHIU

Dated: June 6, 2013

Ayumi Nakamoto
AYUMI NAKAMOTO

APPROVED AS TO FORM

Dated: _____, 2013

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8 Dated: _____, 2013

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Attorneys for Kinfong Sit And Mee Wai Chiu

14 PURSUANT TO STIPULATION AND GOOD CAUSE APPEARING, IT IS SO ORDERED.

6/11/13

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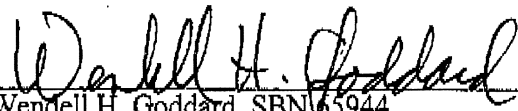
17 Susan Illston, United States District Judge

1 Dated: _____, 2013

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16
17 Susan Illston, United States District Judge